***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

U. S. DEPARTMENT OF LABOR
Bureau of Employees' Compensation

In the matter of the claim for compensation under the Federal Employees' Compensation Act of:

LOUIS TEPLITSKY
(Claimant)

Employed By: Post Office
Morgan Station
New York, New York

COMPENSATION ORDER

AWARD OF COMPENSATION

Case No. A2-104986

Such investigation in respect to the above-entitled claim having been made as is considered necessary, and after due consideration of such claim and reports of record, the Bureau makes the following:

FINDINGS OF FACT

That on the 11th day of December 1963, the claimant above-named was employed as a temporary mail handler by the employing establishment above-named; that he suffered a ligament strain in the left inguinal region as the result of pulling mail packs in the performance of duty on that date; that at the time of this injury he was receiving a service-connected disability award of 50 percent from the Veterans Administration because of a psychiatric condition and effective 9/10/65, this award was increased to 100 percent; that the injury of 12/11/63 caused an aggravation of the preexisting psychiatric condition; that timely notice of injury and claim for compensation were respectively given and filed; that appropriate compensation has been paid through 9/9/65 (although the claimant returned a portion of the payment) and the claimant continues to be entitled to total disability compensation.

Upon the foregoing findings of fact, the claimant is AWARDED compensation for total disability. The payment of this compensation after 9/9/65 is deferred pending receipt of his election of same in lieu of his award from the Veterans Administration.

Given under my hand at Washington, D.C.
this 8th day of July, 1970.

JOHN M. EKBERG
Director

By: VICTOR L. [illegible]
Acting Chief
Division of Claims

cc: Mr. Louis Teplitsky
3181 Rochambeau Avenue
Bronx, New York 10467

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SEC
OFFICE OF THE DIRECTOR
FEB 1 1 1971

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOUIS TEPLITSKY and POST OFFICE DEPARTMENT
U. S. POST OFFICE, New York, N. Y.

Docket No. 71-5; Submitted on the Record; Issued February 9, 1971

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DECISION and ORDER

Before THEODORE M. SCHWARTZ, E. GERALD LAMBOLEY, JAMES A. BRODERICK

The issue is whether appellant is required to make an election. He sustained an employment injury entitling him to benefits under the Federal Employees' Compensation Act and to an increase in benefits under statutes administered by the Veterans Administration.

On December 11, 1963, appellant sustained a left inguinal ligament strain while pulling mail sacks in the course of his employment as a mail handler. At the time of the injury, he was receiving a pension from the Veterans Administration for 50 percent disability due to a service-connected emotional condition. The Bureau of Employees' Compensation determined that the employment injury caused a disabling aggravation of the preexisting emotional condition, but that it did not cause a hernia or any other permanent physical disability. The Board finds that such determination was proper. Appellant was examined several times after the injury and the examining physicians reported that he did not have a hernia. Fifteen years prior to the 1963 injury he had surgery for a left inguinal hernia, but the medical reports subsequent to the injury state that there is no evidence of a recurrence of the hernia.

Effective September 10, 1965, the Veterans Administration found that appellant was totally disabled as a result of aggravation by the employment injury of his service-connected emotional condition, and it authorized a pension for 100 percent disability. The Bureau paid compensation for total disability up to September 10, 1965, the effective date of the increase in Veterans Administration benefits. The Bureau found that subsequent to that date, appellant continued to be totally disabled due to his employment-related emotional condition, but it informed him that, effective that date, he was required to elect between Veterans Administration benefits and benefits under the Federal Employees' Compensation Act, pursuant to §7(a) of the Compensation Act. It pointed out that an election was necessary because both benefits were payable for the same disability.

Appellant contends that he is not required to make an election, and may receive Veterans Administration and Federal Employees' Compensation Act benefits concurrently. He contends that the employment injury caused a recurrence of the old repaired hernia, and that this alleged physical condition caused total disability. Before being informed of the provisions of the law regarding election of benefits, his contention was that the employment injury had aggravated his emotional condition. He instituted an action in federal court to enforce his contention that he is not required to make an election. In an affidavit filed in court, the Bureau stated that prior to September 10, 1965, appellant received $107 a month from the Veterans Administration for a 50 percent service-connected disability due to his emotional condition; that effective on that date the Veterans Administration benefits were increased by an additional $143 a month; that appellant must make an election with respect to the benefits he will receive subsequent to September 10, 1965; that the election is between the $209.99 a month to which he is entitled under the Federal Employees' Compensation Act plus the $107 a month which he received from the Veterans Administration prior to that date on the one hand, and the total benefits which he would be entitled to receive from the Veterans Administration after September 10, 1965, viz. $250 a month, on the other hand. On June 21, 1968, the U. S. Court of Appeals for the Second Circuit stated that appellant is required to make an election, and that the election required is between benefits as described by the Bureau.1/

Section 7(a) of the Federal Employees' Compensation Act provided in part, as follows:

> " * * * whenever any person is entitled to receive any benefits under this Act by reason of his injury, * * * and is also entitled to receive from the United States any payments or benefits * * * by reason of such injury * * * under any other Act of Congress, because of service by him * * * in the Armed Forces of the United States, such person shall elect which benefits he shall receive."2/

The Board finds that under this provision appellant is required to make an election between benefits payable under the Federal Employees' Compensation Act commencing September 10, 1965 and the increased benefits to which he may be entitled after that date under

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1/ Teplitsky v. Bureau of Compensation, U. S. Department of Labor, 288 F. Supp. 310; affirmed as modified, 398 F. 2d 869 (1968); cert. denied, 393 U.S. 943 (1968), 395 U. S. 863 (1969).

2/ 58 Stat. 712, 63 Stat. 861, 74 Stat. 907.

statutes administered by the Veterans Administration. Both such benefits are payable because of the same "injury," namely, aggravation of his emotional condition as a result of the left inguinal ligament strain sustained on December 11, 1963. Section 7(a) prohibits a person from receiving Federal Employees' Compensation Act benefits by reason of an injury and at the same time receiving veteran's benefits by reason of the same injury because of service by him in the Armed Forces. The section requires that an election be made under such circumstances.3/ The compensation order of the Bureau of Employees' Compensation, dated July 8, 1970, is affirmed.

Dated, Washington, D. C.
February 9, 1971

Theodore M. Schwartz
Chairman

E. Gerald Lamboley
Member

James A. Broderick
Member

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3/ See Margaret M. Drueding Kelly, 8 ECAB 44, 345. See also Adeline N. Etzel, Docket No. 69-67. In the latter case, where the Board held that an election was not necessary, the essential circumstances were different from those present in the instant case. As the Board pointed out in that case, the injury sustained there, which resulted in death, was not related to the employee's military service. The Veterans Administration benefits in the Etzel case were because of non-service connected death pension. In the instant case, the Veterans Administration benefits and the Federal Employees' Compensation Act benefits are payable for a condition which is related both to military service and to a civilian employment injury.

On September 6, 1966, the Federal Employees' Compensation Act was recodified. Section 7(a) was recodified as 5 U.S.C. §8116(a) and (b) (80 Stat. 542). The legislative purpose in enacting the codification was to restate the law without substantive change. See Section 7 of the codification statute. (80 Stat. 631) Therefore, the result reached in the present case under §7(a) of the Federal Employees' Compensation Act would also be reached under 5 U.S.C. §8116(b) which became effective on September 6, 1966.

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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Federal Employees' Compensation — Washington, D.C. 20211

November 28, 1973 File No. A2-104986

Honorable Jonathan B. Bingham
House of Representatives
Washington, D. C. 20515

Dear Congressman Bingham:

I am writing further in reply to your recent inquiry concerning the compensation case of Mr. Louis Teplitsky.

On December 11, 1963, Mr. Teplitsky sustained a left inguinal ligament strain while pulling mail sacks in the course of his employment as a mail handler at the U. S. Post Office in New York City. At the time of his injury he was receiving benefits from the Veterans Administration for 50 per cent disability due to a service-connected emotional condition. It was determined that the employment injury caused a disabling aggravation of the pre-existing emotional condition, but that it did not cause a hernia or any other permanent physical disability.

Mr. Teplitsky was entitled to total disability compensation and it was paid up to September 10, 1965, the effective date of the increase to 100 per cent disability by the Veterans Administration because of aggravation by the employment injury of his service-connected emotional condition. This office found that subsequent to September 10, 1965, Mr. Teplitsky continued to be totally disabled due to his employment-related disability but, effective that date, an election was necessary between Veterans Administration benefits and benefits under the Federal Employees' Compensation Act. Title 5, USC 8116, prohibits the concurrent payment of awards by the Veterans Administration and the Federal Employees' Compensation Act for the same disability.

In a letter dated April 12, 1970, Mr. Teplitsky requested a formal decision from this office and on July 8, 1970, an order was issued to the effect that the payment of compensation after September 9, 1965, was deferred pending receipt of an election of same in lieu of the award from the Veterans Administration. He requested a review of this decision by the Employees' Compensation Appeals Board, and on February 9, 1971, the Board affirmed the compensation order issued on July 8, 1970.

This Office regrets that it can take no action pending the receipt of the required election from Mr. Teplitsky. Should he elect the benefits of the Federal Employees' Compensation Act, prompt action will be taken to restore him to the compensation rolls.

Sincerely,

HERBERT A. DOYLE, JR.
Director Office of
Federal Employees' Compensation

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workmen's Compensation Programs — Washington, D.C. 20211

March 10, 1975 File No. A2-1041986

Honorable Jonathan B. Bingham
Member, House of Representatives
684 Britton Street
Bronx, New York 10467

Dear Congressman Bingham:

I have reference to your letter of March 6, 1975, with enclosure, written in the interest of Mr. Louis Teplitsky.

Mr. Teplitsky sustained a left inguinal ligament strain while in the course of his employment as a mail handler at the United States Post Office, New York, New York on December 11, 1963.

Mr. Teplitsky was at that time receiving benefits from the Veterans Administration for 50% disability due to a service connected psychiatric condition. The injury of December 11, 1963, caused a disabling aggravation of his pre-existing psychiatric condition, but did not result in any permanent physical disability.

Mr. Teplitsky was entitled to total disability compensation which was paid to September 10, 1965. Effective that date, the Veterans Administration increased his service connected psychiatric disability to 100% because of the aggravation resulting from the December 11, 1963 injury.

Mr. Teplitsky continued to be totally disabled due to his employment related psychiatric condition after September 10, 1965, however, effective that date an election was necessary between the benefits of the Veterans Administration and those of the Office of Workers' Compensation Programs. Section 5 USC 8116 of the Federal Employees' Compensation Act prohibits the concurrent payment of awards by the Veterans Administration and the Office of Workers' Compensation Programs.

The 1974 amendments to the Federal Employees' Compensation Act (Public Law 93-416) amend this section of the Act, but still require an election between the benefits of the Office of Workers' Compensation Programs and the 50% increase in Veterans Administration benefits which Mr. Teplitsky received as a result of his employment related injury.

Mr. Teplitsky contended that he was not required to make an election and that he was entitled to receive both benefits because the employment injury represented a physical disability. He instituted an action in Federal Court to enforce his contention. The U. S. Court of Appeals for the Second Circuit ruled on June 21, 1968, that he was required to make an election.

In a letter dated April 12, 1970, Mr. Teplitsky requested a formal decision from this Office, and on July 8, 1970, an order was issued to the effect that the payment of compensation after September 9, 1965, was deferred pending receipt of an election of same in lieu of the award from the Veterans Administration. Mr. Teplitsky requested a review of this decision by the Employees' Compensation Appeals Board, Washington, D. C. The Board affirmed the decision of this Office on February 9, 1971.

Mr. Teplitsky and his attorney have been requested to submit an election on several occasions since 1971, however, it has not been received to date. It is regretted that this Office can take no action pending receipt of the required election from Mr. Teplitsky. Should he elect the benefits of the Federal Employees' Compensation Act, prompt action will be taken to restore him to the compensation rolls.

Sincerely,

John D. McLellan Jr.

JOHN D. McLELLAN, JR.
Deputy Commissioner

MARCH-15-1976

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

Office of Federal Employees' Compensation

1515 Broadway (at West 44th St.)
New York, N.Y. 10036

March 15, 1976

File No. A2-104980

Honorable Jacob K. Javits
United States Senator
110 East 45th Street
New York, New York 10017

JOHN D. McLELLAN, JR.
Deputy Commissioner

Dear Senator Javits:

I have reference to your inquiry of February 2, 1976, with attached enclosure, written in the interest of Mr. Louis Teplitsky.

Mr. Teplitsky sustained a left inguinal ligament strain while in the course of his employment as a mail handler at the New York City Post Office on December 11, 1963. He was at that time receiving benefits from the Veterans Administration for 50% disability due to a service connected psychiatric condition. The injury of December 11, 1963 caused a disabling aggravation of his preexisting psychiatric condition, but did not result in any permanent physical disability.

Mr. Teplitsky was entitled to total disability compensation which was paid to September 10, 1965. Effective that date, the Veterans Administration increased his service connected psychiatric disability to 100% because of the aggravation resulting from the December 11, 1963 injury.

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